

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Adoption of Chapter 3-129  
Hawaii Administrative Rules

November 7, 1995

SUMMARY

Chapter 129 of Title 3, Hawaii Administrative Rules, entitled "Surplus Property", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 129

SURPLUS PROPERTY

§3-129-1	Purpose
§3-129-2	Definitions
§3-129-3	State agency for surplus property
§3-129-4	Donee certification and agreements
§3-129-5	Authority to transfer
§3-129-6	Transfer charges

§3-129-1 Purpose. (a) To promote the donation of federal surplus personal property to the State and local organizations for public purposes and other purposes in accordance to Public Law 94-519 and Hawaii state plan of operation in accordance with part XI, chapter 103D, HRS.

(b) State surplus personal property acquired through the state surplus property office must be used by the public agency to carry out or to promote for the residents of a given political area one or more public purposes in accordance with part XI, chapter 103D, HRS. [Eff DEC 15 1995 ] (Auth: HRS §103D-202) (Imp: HRS §103D-1103)

§3-129-2 Definitions. As used in this chapter: "Donee" means a service educational activity; a state, political subdivision, municipality, or tax-supported institution acting on behalf of a public airport; a public agency using surplus personal

property in carrying out or promoting for the residents of a given political area one or more public purposes, such as conservation, economic development, education, parks and recreation, public health, and public safety;

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an eligible nonprofit tax-exempt educational or public health institution or organization; the American National Red Cross; a public body; a charitable institution; or any state or local government agency, and any nonprofit organization or institution, which receives funds appropriated for programs for older individuals under the Older Americans Act of 1965, as amended, under Title IV or Title XX of the Social Security Act, or under Titles VIII and X of the Economic Opportunity Act of 1964 and the Community Services Block Grant Act. [Eff DEC 15 1995 ] (Auth: HRS §103D-202) (Imp: HRS §103D-1101)

§3-129-3 State agency for surplus property. The surplus property staff of the state procurement office is the state agency designated to administer a statewide plan of operation for a fair and equitable distribution of surplus property in conformity with Section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, and chapter 103D-1102, HRS. [Eff DEC 15 1995 ] (Auth: HRS §103D-202) (Imp: HRS §103D-1102)

§3-129-4 Donee certification and agreements.

(a) To be eligible for surplus property a donee certifies that:

- (1) It is a public agency or a nonprofit institution or organization exempt from taxation under section 501 of the Internal Revenue Code of 1954 within the meaning of Section 203 (j) of the Federal Property and Administrative Services Act of 1949, as amended, and regulations of the administrator of General Services Administration;
- (2) If a public agency, the property is needed and will be used by the recipient for carrying out or promoting for the residents

of a given political area one or more public purposes, or, if a nonprofit, tax-exempt institution or organization, the property is needed for and will be used by the recipient for educational or public health purposes, including research for such purpose, or for programs for older individuals;

- (3) The property is not being acquired for any other use or purpose, or for sale or other

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distribution, or for permanent use outside the State, except with prior approval of the state agency;

- (4) Funds are available to pay all costs and charges incident to donation; and
- (5) They shall be subject to the nondiscrimination regulations governing the donation of surplus personal property issued under Title VI of the Civil Rights Act of 1964, Section 606 of Title VI of the Federal Property and Administrative Services Act of 1949, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, Title IX of the Education Amendments of 1972, as amended and Section 303 of the Age Discrimination Act of 1975.

(b) When issued surplus property, the donee agrees:

- (1) That all items of property shall be placed in use for the purpose(s) for which acquired, within one year of receipt and shall be continued in use for such purpose(s) for one year from the date the property was placed in use. In the event the property is not so placed in use or continued in use, the donee shall immediately notify the state agency and, at the donee's expense, shall return such property to the state agency or otherwise make the property available for transfer or other disposal by the state agency, provided the property is still usable as determined by the state agency;
- (2) To special handling or use limitations as are imposed by the General Services

Administration on any item(s) of property listed hereon; and

- (3) That in the event the property is not so used or handled as required by paragraphs (1) and (2), title and right to the possession of such property shall at the option of General Services Administration, revert to the United States of America and upon demand the donee shall release such property to such person as the general services administration or its designee shall direct.

(c) The donee agrees to the following conditions imposed by the state agency, applicable to items with a unit acquisition cost of five thousand dollars or more

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and passenger motor vehicles, regardless of acquisition costs, except vessels fifty feet or more in length and aircraft:

- (1) The property shall be used only for the purpose(s) for which acquired and for no other purpose(s);
- (2) There shall be a period of restriction which will expire after such property has been used for the purpose(s) for which acquired for a period of eighteen months from the date the property is placed in use, except for such items of major equipment, listed hereon, on which the state agency designates a further period of restriction; and
- (3) In the event the property is not so used as required by paragraphs (1) and (2) and the federal restrictions in sections (b)(1) and (b)(2) have expired, then title and right to the possession of such property shall at the option of the state agency revert to the State and the donee shall release such property to such person as the state agency shall direct.

(d) The donee agrees to the following terms, reservations, and restrictions:

- (1) From the date of receipt of the property listed hereon and through the period(s) of time the conditions imposed by subsections (b) and (c) remain in effect, the donee shall

not sell, trade, lease, lend, bail, cannibalize, encumber, or otherwise dispose of such property, or remove it permanently for use outside the State, without the prior approval of the General Services Administration under subsection (b) or the state agency under subsection (c). The proceeds from any sale, trade, lease, loan, bailment, encumbrance, or other disposal of the property, when such action is authorized by the General Services Administration or by the state agency, shall be remitted promptly by the donee to the General Services Administration or the state agency, as the case may be;

- (2) In the event any of the property is sold, traded, leased, loaned, bailed, cannibalized, encumbered, or otherwise disposed of by the donee from the date it receives the property

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through the period(s) of time the conditions imposed by subsections (b) and (c) remain in effect, without the prior approval of the General Services Administration or the state agency, the donee, at the option of the General Services Administration or the state agency shall pay to the General Services Administration or the state agency, as the case may be, the proceeds of the disposal or the fair market value or the fair rental value of the property at the time of such disposal, as determined by the General Services Administration or the state agency;

- (3) If at any time, from the date of receipt of the property through the period(s) of time the conditions imposed by subsections (b) and (c) remain in effect, any of the property listed hereon is no longer suitable, usable, or further needed by the donee for the purpose(s) for which acquired, the donee shall promptly notify the state agency, and shall, as directed by the state agency, return the property to the state agency, release the property to another donee or

another state agency, department, or agency of the United States, sell, or otherwise dispose of the property. The proceeds from any sale shall be remitted promptly by the donee to the state agency;

(4) The donee shall make reports to the state agency on the use, condition, and location of the property, and on other pertinent matters as may be required from time to time by the state agency; and

(5) At the option of the state agency, the donee may abrogate the conditions set forth in subsection (c) and the terms, reservations, and restrictions pertinent thereto in this subsection by payment of an amount as determined by the state agency.

(e) The donee agrees to the following conditions, applicable to all items of property listed hereon:

(1) The property acquired by the donee is on an "as is, where is" basis, without warranty of any kind; and

(2) Where a donee carries insurance against damages to or loss of property due to fire or other hazards and where loss of or damage to

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donated property with unexpired terms, conditions, reservations, or restrictions occurs, the state agency will be entitled to reimbursement from the donee out of the insurance proceeds of an amount equal to the unamortized portion of the fair value of the damaged or destroyed donated items.

(f) The terms and conditions applicable to the donation of aircraft and vessels (fifty feet or more in length) having an acquisition cost of five thousand dollars or more, and other items of property requiring special handling or use limitations, regardless of the purpose for which acquired are subject to the terms, conditions, reservations and restrictions set forth in the conditional transfer document executed by the authorized donee representative.

(g) The donee agrees to the following terms and conditions imposed by the state agency applicable to items with a unit acquisition cost of under five

thousand dollars:

- (1) The state agency may at its discretion, and when it considers appropriate, impose reasonable terms, conditions, reservations, and restrictions on the use of surplus property items other than those with a unit acquisition cost of five thousand dollars or more, and passenger motor vehicles; and
- (2) The state agency will impose on the donation of any surplus item of property, regardless of acquisition cost, such conditions involving special handling or use limitations as the General Services Administration may determine necessary because of the characteristics of the property.  
[Eff DEC 15 1995 ] (Auth: HRS §§103D-202, 103D-1105) (Imp: HRS §§103D-1103, 103D-1105)

§3-129-5 Authority for transfer. (a) The surplus property administrator shall determine donee eligibility for the acquisition of federal or state surplus property. Eligibility for both state and federal surplus property shall be the same.

(b) Donee compliance for federal property shall be in accordance with the state plan and federal law. Donee compliance for state property shall be determined by the surplus property administrator.

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[Eff DEC 15 1995 ] (Auth: HRS §§103D-202, 103D-1105) (Imp: HRS §§103D-1103, 103D-1105)

§3-129-6 Transfer charges. (a) At the time property is received at the state agency's warehouse, service charges are established based on the following factors:

- (1) Item acquisition cost or fair value;
- (2) Type, condition, quantity, and proposed use of property;
- (3) Screening and transportation;
- (4) Warehousing, handling, and crating;
- (5) Personnel, administration, and accounting;



- (6) Utilities and telephone;
- (7) Maintenance, fuels, and lubricants;
- (8) Compliance, surveys, correspondence, and records;
- (9) Operating reserve; and
- (10) Printing.

(b) Transportation and other unusual costs are prorated except when applicable to a single unit of property.

(c) Service charges, as a whole, for the care and handling of surplus property will be limited to the amount necessary to pay actual expenses of current operations and to purchase necessary equipment, plus the accumulation and maintenance of a working capital reserve. The service charge assessed for the transfer of any single items of surplus property will be reasonable in relation to the costs incident to the transfer.

(d) The total of the service charges for all property donated by the agency during any given fiscal year shall not exceed twenty per cent of the original government acquisition cost of the property.

[Eff DEC 15 1995 ] (Auth: HRS §103D-202) (Imp: HRS §103D-1106)

#### DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Chapter 3-129, Hawaii Administrative Rules, on the Summary Page dated November 7, 1995, was adopted on November 7, 1995, following a public hearing held on September 21, 1995 in Kailua-Kona, Hawaii; September 22, 1995 in Hilo, Hawaii; September 26, 1995 in Honolulu, Hawaii; October 10, 1995 in Wailuku, Maui;

and on October 20, 1995 in Lihue, Kauai, after public notice was given in the Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on August 21, 1995, and in The Honolulu Advertiser on August 22, 1995.

The adoption of chapter 3-129 shall take effect ten days after filing with the Office of the Lieutenant Governor.

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Haruo Shigezawa  
Chairperson  
Procurement Policy Board

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Sam Callejo  
State Comptroller

APPROVED:

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Benjamin J. Cayetano  
Governor  
State of Hawaii

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

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Deputy Attorney General

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Filed